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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

EPIC GAMES, INC.

Plaintiff, Counter-defendant
v.

APPLE INC.,

Defendant, Counterclaimant

Case No. 4:20-cv-05640-YGR-TSH

**APPLE INC.'S STATEMENT IN SUPPORT
OF ADMINISTRATIVE MOTIONS TO
SEAL**

The Honorable Thomas S. Hixson

TABLE OF CONTENTS

| | <u>Page</u> |
|---------------------|-------------|
| LEGAL STANDARD..... | 1 |
| DISCUSSION..... | 2 |
| CONCLUSION..... | 4 |

TABLE OF AUTHORITIES

Page(s)Cases

| | |
|--|------|
| <i>Al Otro Lado, Inc. v. Wolf</i> , 2020 WL 5422784 (S.D. Cal. Sept. 10, 2020)..... | 2 |
| <i>In re Anthem, Inc. Data Breach Litig.</i> , 2018 WL 3067783 (N.D. Cal. Mar. 16, 2018)..... | 2 |
| <i>Apple Inc. v. Rivos, Inc.</i> , 2024 WL 1204115 (N.D. Cal. Mar. 21, 2024)..... | 1, 3 |
| <i>DNA Genotek Inc. v. Spectrum Sols., L.L.C.</i> , 2023 WL 4335734 (S.D. Cal. May 10, 2023)..... | 2, 3 |
| <i>Ervine v. Warden</i> , 214 F. Supp. 3d 917 (E.D. Cal. 2016)..... | 2 |
| <i>Kamakana v. City and Cnty. of Honolulu</i> , 447 F.3d 1172 (9th Cir. 2006) | 1, 2 |
| <i>Krommenhock v. Post Foods, LLC</i> , 2020 WL 2322993 (N.D. Cal. May 11, 2020)..... | 3 |
| <i>Lamartina v. VMware, Inc.</i> , 2024 WL 3049450 (N.D. Cal. June 17, 2024)..... | 2 |
| <i>Lee v. Great Am. Life Ins. Co.</i> , 2023 WL 8126850 (C.D. Cal. Nov. 13, 2023)..... | 2 |
| <i>Phillips v. Gen. Motors Corp.</i> , 307 F.3d 1206 (9th Cir. 2002) | 1, 3 |
| <i>PQ Labs, Inc. v. Qi</i> , 2014 WL 4617216 (N.D. Cal. Sept. 15, 2014)..... | 1 |
| <i>Rembrandt Diagnostics, LP v. Innovacon, Inc.</i> , 2018 WL 1001097 (S.D. Cal. Feb. 21, 2018)..... | 2 |
| <i>Snapkeys, Ltd. v. Google LLC</i> , 2021 WL 1951250 (N.D. Cal. May 14, 2021)..... | 2, 3 |
| <i>UnifySCC v. Cody</i> , 2023 WL 7170265 (N.D. Cal. Oct. 30, 2023)..... | 3 |
| <i>Vineyard House, LLC v. Constellation Brands U.S. Ops., Inc.</i> , 619 F. Supp. 3d 970 (N.D. Cal. 2021) | 2 |

| | | |
|---|---|---|
| 1 | <i>Williams v. Apple Inc.</i> , | |
| 2 | 2021 WL 2476916 (N.D. Cal. June 17, 2021) | 3 |

3 **Other Authorities**

| | | |
|---|---|---|
| 4 | Federal Rule of Civil Procedure 26(c) | 1 |
| 5 | Local Rule 79-5..... | 1 |

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Pursuant to Federal Rule of Civil Procedure 26(c) and Local Rule 79-5, Apple Inc. (“Apple”) submits this statement in support of Epic Games, Inc.’s Administrative Motions to Consider Whether Another Party’s Material Should Be Sealed Pursuant to Civil Local Rule 79-5 (Dkts. 1201, 1203, 1212) (“Epic’s Motions”). Each of these Motions attaches a different exhibit (each designated “Exhibit A”). For ease of reference, Apple will refer to Exhibit A (1201), Exhibit A (1203), and Exhibit A (1212). Apple respectfully requests that the Court seal portions of each, because they contain information sealable under controlling law and Local Rule 79-5.

Exhibit A (1201) and Exhibit A (1203) each contain excerpts from Apple’s privilege log prepared for the Special Masters conducting evaluation of the privilege claims stemming from Apple’s re-review. The privilege logs are required to be filed under the terms of the Special Master Protocol, but contain competitively sensitive, non-public information regarding Apple’s project codenames and/or the engagement of outside legal counsel and consultants in connection with various regulatory issues. They also contain personally identifiable information in the form of email addresses of Apple employees. Exhibit A (1212) contains competitively sensitive, non-public information regarding Apple’s engagement of outside legal counsel and consultants in connection with various regulatory issues.

Apple’s proposed redactions of Exhibit A (1201) and Exhibit A (1203) are indicated in the redacted versions filed with this statement and itemized in the concurrently filed Declaration of Mark A. Perry (the “Perry Declaration”). Epic has already filed a redacted version of Exhibit A (1212) at Dkt. 1213.

LEGAL STANDARD

“The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense,” including preventing the disclosure of information. *See* Fed. R. Civ. P. 26(c). The Court has “broad latitude” “to prevent disclosure of materials for many types of information, including, *but not limited to*, trade secrets or other confidential research, development, or confidential information.” *Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002) (emphasis in original); *see also Kamakana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (compelling circumstances exist to seal potential release of trade secrets) (citing

1 *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978)); *PQ Labs, Inc. v. Qi*, 2014 WL 4617216,
 2 at *1 (N.D. Cal. Sept. 15, 2014) (granting multiple motions to seal where publication would lead to the
 3 disclosure of trade secrets); *Apple Inc. v. Rivos, Inc.*, 2024 WL 1204115, at *1 (N.D. Cal. Mar. 21, 2024)
 4 (granting request to seal “internal product codenames” and noting that a prior request for the same had
 5 also been granted). Courts often find good cause exists to seal personally identifiable information. *See*,
 6 *e.g., Snapkeys, Ltd. v. Google LLC*, 2021 WL1951250, at *3 (N.D. Cal. May 14, 2021) (granting motion
 7 to file under seal personally identifiable information, including email addresses and telephone numbers
 8 of current and former employees).

9 Although a party must show compelling circumstances to seal information appended to
 10 dispositive motions, the standard for non-dispositive motions is simply “good cause.” *In re Anthem, Inc.*
 11 *Data Breach Litig.*, 2018 WL 3067783, at *2 (N.D. Cal. Mar. 16, 2018); *Rembrandt Diagnostics, LP v.*
 12 *Innovacon, Inc.*, 2018 WL 1001097, at *1 (S.D. Cal. Feb. 21, 2018); *see DNA Genotek Inc. v. Spectrum*
 13 *Sols., L.L.C.*, 2023 WL 4335734, at *2 (S.D. Cal. May 10, 2023). In general, requests to seal information
 14 should be narrowly tailored “to remove from public view only the material that is protected.” *Ervine v.*
 15 *Warden*, 214 F. Supp. 3d 917, 919 (E.D. Cal. 2016); *Vineyard House, LLC v. Constellation Brands U.S.*
 16 *Ops., Inc.*, 619 F. Supp. 3d 970, 972 n.2 (N.D. Cal. 2021) (Gonzalez Rogers, J.) (granting a motion to
 17 seal “because the request is narrowly tailored and only includes confidential information”).

18 DISCUSSION

19 Apple seeks to seal the personally identifiable information and the sensitive business information
 20 regarding project codenames and Apple’s engagement of certain outside counsel and consultants in the
 21 exhibits to Epic’s Motions. *See Perry Decl.* ¶ 5.

22 Apple’s administrative motion to seal is subject to the “good cause” standard because it concerns
 23 non-dispositive objections related to discovery. *See, e.g., Kamakana*, 447 F.3d at 1179 (“[T]he public
 24 has less of a need for access to court records attached only to non-dispositive motions because those
 25 documents are often unrelated, or only tangentially related, to the underlying cause of action.”); *Lee v.*
 26 *Great Am. Life Ins. Co.*, 2023 WL 8126850, at *2 (C.D. Cal. Nov. 13, 2023) (“Matters concerning
 27 discovery generally are considered nondispositive of the litigation” (quotation omitted)); *see also In re*
 28

1 *Anthem, Inc. Data Breach Litig.*, 2018 WL 3067783, at *2; *Rembrandt Diagnostics, LP*, 2018
 2 WL1001097, at *1; *Al Otro Lado, Inc. v. Wolf*, 2020 WL 5422784, at *4 (S.D. Cal. Sept. 10, 2020).

3 Apple's sealing request meets the good cause standard here. *Lamartina v. VMware, Inc.*, 2024
 4 WL 3049450, at *2 (N.D. Cal. June 17, 2024) (good cause to seal internal email communications). Apple
 5 operates in an intensely competitive environment, and thus has taken extensive measures to protect the
 6 confidentiality of its information. *See Perry Decl.* ¶ 3. Disclosure of the sealed information in the
 7 exhibits relating to the confidential engagement of outside counsel and consultants and confidential
 8 project codenames could harm Apple's business interests. *Id.* ¶ 5; *see also DNA Genotek Inc.*, 2023 WL
 9 4335734, at *2 (finding good cause where disclosure would "undercut" a party's "position ... in the
 10 marketplace"). Additionally, courts in this district have found not only good cause, but compelling
 11 reasons exist to seal personally identifiable information. *See Snapkeys*, 2021 WL 1951250, at *3
 12 (granting motion to file under seal personally identifiable information, including email addresses and
 13 telephone numbers of current and former employees); *see also UnifySCC v. Cody*, 2023 WL 7170265,
 14 at *1 (N.D. Cal. Oct. 30, 2023) (finding compelling reasons to seal personally identifying information
 15 of employees, including names, addresses, phone numbers, and email addresses).

16 Apple has narrowly tailored its sealing request to include only the information necessary to
 17 protect its confidential business information and personally identifiable information. *See Krommenhock*
 18 *v. Post Foods, LLC*, 2020 WL 2322993, at *3 (N.D. Cal. May 11, 2020) (granting motion to seal
 19 "limited" information); *see also Phillips*, 307 F.3d at 1211; *Williams v. Apple Inc.*, 2021 WL 2476916,
 20 at *2–3 (N.D. Cal. June 17, 2021) (noting Apple's narrowed sealing requests with "tailored redactions");
 21 Dkt. No. 643 at 3 (finding Apple's proposed redactions appropriate for an exhibit when redactions were
 22 "narrowly tailored" to "sensitive and confidential information"). Apple has only partially redacted
 23 limited information in the exhibits. *See Perry Decl.* ¶ 5.

24 For the foregoing reasons, there is good cause that warrants partially sealing the exhibits to Epic's
 25 Motions.

26 CONCLUSION

27 Apple respectfully requests that the Court seal the information identified in the accompanying
 28

1 declaration.

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3
4 Dated: February 19, 2025

Respectfully submitted,

5 By: Mark A. Perry

6 Mark A. Perry

WEIL, GOTSHAL & MANGES LLP

7 Attorney for Apple Inc.
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